

# Tennessee Board of Dentistry

# Newsletter



Fall 2004

A regulatory agency of the State of Tennessee

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The Board of Dentistry has the duty and responsibility to function in such a manner as to promote and protect the public's health, safety and welfare. Thus, the Board must review licensure applications and determine whether the applicant is qualified to be issued a license in accordance with the facts, the law and the regulatory statutes governing the profession, public welfare demanding it. *Policy Statement Adopted May 1998*



## New Rules Effective August 11, 2004

The Board of Dentistry had a new rule defining unprofessional conduct and revisions to the prescribing/dispensing of controlled substances rule become effective August 11, 2004.

The prescribing/dispensing rule is in Rule 0460-2-.11(2)(b) and the text of the rule is as follows:

Rule 0460-2-.11(2)(b) - Dentists may prescribe, dispense or otherwise distribute the controlled substances listed in Schedules II, III, IV, and V, as provided in 21 C.F.R. Chapter 2, 1308.12 through .15, only to individuals with whom they have established a dentist/patient relationship and for whom they have provided dental services. For purposes of this provision, a "dentist/patient" relationship exists where a dentist has provided dental treatment to a patient on at least one (1) occasion within the preceding year, or exists by having adequate documented knowledge of the specific patient history.

The unprofessional conduct rules are in Rule 0460-1-.12 and the text of the rule is as follows:

0460-1-.12 Unprofessional Conduct. Pursuant to T.C.A. § 63-5-124, the Board is authorized to refuse to grant a license or certificate to an applicant or to discipline an individual licensed or certified by the Board if that individual has engaged in unprofessional conduct. Pursuant to its authority under T.C.A. § 63-5-124, the Board declares that unprofessional conduct includes, but is not limited to, the following:

- (1) Exercising undue influence on the patient or client, including the promotion of the sale of services, goods, appliances or drugs in such manner as to exploit the patient or client for the financial gain of the practitioner or of a third party.
- (2) Directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or client or in connection with the performance of professional services.
- (3) Failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client.

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## Legislation Passed in 2004

Legislation passed in 2004 by legislators included several bills that effect the dental profession. The following are summaries of the Public Chapters (P.C.) and the action, if any, that the board will be required to take.

**P.C. 563** - Allows public health nurses or nurse practitioners to apply fluoride varnish to the teeth of at risk, underserved persons in or under the auspices of a state, county or municipal public health clinic.

**P.C. 579** - Establishes a new special volunteer license for several professions, including dentist and dental hygienist, to provide services at a free health clinic which are operated by a nonprofit private entity. No fee will be charged to apply for the special volunteer license and the license will be valid for a period of two years and may be renewed on a biennial basis. The Board will be developing rules to implement the special volunteer license.

**P.C. 615** - Authorizes the Board to promulgate rules that would establish qualifications, criteria and curricula for issuance of a permit to a dental hygienist to administer a local anesthetic under the direct supervision of a licensed dentist. The Board is developing rules to implement this permit. Dental hygienist may not administer local anesthesia until rules are effective, an approved course is taken and a permit has been issued by the Board.

**P.C. 678** - This statute requires any written or electronic prescription prepared by a dentist with authority to prescribe to be legibly printed or typed so that it is comprehensible by the pharmacist who fills the prescription. The written or electronic prescription must contain the name of the prescribing dentist, the name and strength of the drug prescribed, the quantity of the drug prescribed (written in both letters and numerals), instructions for the proper use of the drug, and the month and day that the prescription was issued (written in letters or numerals). The prescribing dentist must sign the written or electronic order on the day it is issued. Nothing in the statute shall be construed to prevent a dentist from issuing a verbal prescription.


**P.C. 720** - Allows the Board to recognize specialty certification of dentists licensed through criteria licensure if the requirements for certification of the original state are substantially equivalent to the requirements in Tennessee. The Board will discuss developing rules at the September meeting.

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## Rule Changes Effective August 11, 2004

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- (4) Making false or materially incorrect or inconsistent entries in any patient records or in the records of any health care facility, school, institution or other work place location.
- (5) Revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law.
- (6) Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
- (7) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them.
- (8) Performing professional services which have not been duly authorized by the patient or client or his or her legal representative.
- (9) Failing to maintain an accurate and legible written evaluation and treatment history for each patient.
- (10) Failing to identify to a patient, patient's guardian or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request.
- (11) Failing to report suspected child abuse to the proper authorities, as required by T.C.A. § 37-1-403(a)(2).
- (12) Failing to respond to written communications from the Department of Health, which are sent pursuant to T.C.A. § 63-1-117(a), to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct.
- (13) Falsifying, altering or destroying treatment records in contemplation of an investigation by the Board or a lawsuit being filed by a patient.
- (14) Intentionally presenting false or misleading testimony, statements, or records to the Board or the Board's investigator or employees during the scope of any investigation, or at any hearing of the Board.
- (15) Conspiring with any person to commit an act, or committing an act which would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Department of Health during any investigation involving the Board.
- (16) Violating any lawful order of the Board previously entered in a disciplinary hearing, or failing to comply with a lawfully-issued subpoena of the Board.
- (17) Violating any term of probation or condition or limitation imposed on the licensee by the Board.
- (18) Practicing with an expired, retired, suspended or revoked license, permit, or registration.
- (19) Prescribing controlled substances for a habitual drug user in the absence of substantial dental justification.
- (20) Prescribing drugs for other than legitimate dental purposes.
- (21) Providing prescriptions for any controlled substances listed in Schedules II, III, IV, and V, as provided in 21 C.F.R. Chapter 2, 1308.12 through .15, to patients with whom no dentist/patient relationship has been established. For purposes of this provision, a "dentist/patient" relationship exists where a dentist has provided dental treatment to a patient on at least one (1) occasion within the preceding year, or exists by having adequate documented knowledge of the specific patient history.
- (22) Using or removing narcotics, drugs, supplies or equipment from any health care facility, school, institution or other work place location without prior authorization.
- (23) Pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms containing the dentist's signature or the name of any controlled substances listed in Schedules II, III, IV, and V, as provided in 21C.F.R. Chapter 2, 1308.12 through .15.
- (24) Failing to exercise reasonable diligence to prevent partners, associates, and employees from engaging in conduct which would violate any provisions of the Tennessee Dental Practice Act or any rule, regulation, or order of the Board.
- (25) Failing to avoid interpersonal relationships that could impair professional judgment or risk the possibility of exploiting the confidence of a patient, including committing any act of sexual abuse, misconduct or exploitation related to the licensee's practice of dentistry.
- (26) Termination of a dentist/patient relationship by a dentist, unless notice of the termination is provided to the patient. For purposes of this provision, a "dentist/patient" relationship exists where a dentist has provided dental treatment to a patient on at least one occasion within the preceding year.
  - (a) "Termination of a dentist/patient relationship by the dentist" means that the dentist is unavailable to provide dental treatment to a patient, under the following circumstances:
    - 1. The office where the patient has received dental care has been closed permanently or for a period in excess of thirty (30) days; or
    - 2. The dentist discontinues treatment of a particular patient for any reason, including non-payment of fees for dental services, although the dentist continues to provide treatment to other patients at the office location.
  - (b) The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to the patient, which notice shall provide the date that the termination becomes effective, and the date on which the dentist/patient relationship may resume, if applicable.
  - (c) The notice shall be mailed at least fourteen (14) days prior to the date of termination of the dentist/patient relationship, unless the termination results from an unforeseen emergency (such as sudden injury or illness), in which case the notice shall be mailed as soon as practicable under the circumstances.
- (27) Interfering or attempting to interfere with the professional judgment of an individual who is licensed or certified by the Board. Examples of interfering with the professional judgment of an individual who is licensed or certified by the Board include, but are not limited to, the following:
  - (a) Setting a maximum or other standardized time for the performance of specific dental procedures.
  - (b) Establishing professional standards, protocols or practice guidelines which conflict with generally accepted standards within the dental profession.
  - (c) Entering into any agreement or arrangement for management services that:
    - 1. interferes with a dentist's exercise of his/her independent professional judgment;
    - 2. encourages improper overtreatment or undertreatment by dentists; or
    - 3. encourages impermissible referrals from unlicensed persons in consideration of a fee.
  - (d) Placing limitations or conditions upon communications that are clinical in nature with the dentist's patients.
  - (e) Precluding or restricting an individual's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.
  - (f) Penalizing a dentist for reporting violations of a law regulating the practice of dentistry.

A copy of the rules, as amended, is available in the "Rules and Regulations" section of the Board's web site. 



## Display of Certificate

T.C.A. 63-1-109(a)(1) states that "Every person registered to practice the healing arts, or any branch thereof, under this chapter shall keep such person's certificate of registration displayed in the office or place in which such person practices, in a conspicuous place..."

This requires all licensees to display their renewal certificate in the office. This will include the certificates of dentist, dental hygienist, and dental assistants. Each time a licensee renews and a new certificate is issued, the most current certificate should be displayed in the office.

Licensees who practice in more than one office in Tennessee can make a copy of the certificate and note that the original is posted at (the name of the office).

Any licensee who can not locate their current certificate should check the department's licensure verification web site or the telephone verification system to confirm that the license is still current.

- If the license is current, the licensee should call the board's office and request the Application for Duplicate License. The fee is \$30.00 for dentist (effective September 1<sup>st</sup>) and \$20.00 for dental hygienist and dental assistants.
- If the license is not current, the licensee should call the board's office and request a Reinstatement/Reactivation Application. Licensees without current licenses/registrations are not licensed/registered to legally practice in the State of Tennessee until the license/registration is current.

Remember that all licensees expire the last day of the month of your birthday either in an even or odd year. If you were born in an odd year, it will always expire in an odd year, if born in even year, it will always expire in an even year. 🦷

### CHANGES OF ADDRESS

Must be reported in writing or by web within 30 days!

- Your name and license number;
- Your profession;
- Your new address and phone number, e-mail address, and/or your fax number; and
- Your SIGNATURE!

Board's Fax Number: 615-532-5369 or [tennessee.gov/health](http://tennessee.gov/health).

## Legislation Passed in 2004

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**P.C. 902** - This statute requires insurance companies or risk retention groups that provide malpractice insurance or professional liability insurance to Tennessee health care professionals, including dentist, as well as providers who do not carry professional liability insurance, except the state and those employed by the state, to report certain malpractice data to the Department of Commerce and Insurance by April 1<sup>st</sup> of each year. The aggregate data is to be reported to the General Assembly by September 1<sup>st</sup>. Information on physicians and dentist shall also be reported to the Department of Health, Division of Health Related Boards. This section becomes void on September 30, 2008.

The other section of the statute requires insurance companies providing insurance coverage against civil liability for the death or personal injury of any person as the result of negligence or malpractice in rendering of professional services by a licensed dentist shall report to the Board of Dentistry any

settlement of a claim or judgment, sealed, confidential or otherwise, of five thousand dollars or more which arises out of a claim of negligence or malpractice on the part of an insured dentist as distinguished from administrative matters. The report shall be made within 30 days of the settlement or judgment and shall contain only the following information:

- (1) The name and address of the licensed dentist;
- (2) The name and address of the plaintiff;
- (3) The name of the patient, if different from the plaintiff;
- (4) The name and location of the court in which a claim was filed, if any;
- (5) The amount of any judgment or settlement; and
- (6) The identity of the insurance company and the person filling out the report.

The reports shall be confidential, shall not be subject to public inspection, shall not be subject to subpoena or used as evidence in any legal proceeding, civil or criminal. The reported judgments and settlements contained in the reports, except those that are ordered sealed or to remain confidential by a court of competent jurisdiction, may be used to fulfill the requirements of the Consumer right to Know Act of 1998 but may not be used to initiate or prosecute any administrative proceeding before the Board of Licensing Health Care Facilities. 🦷



## Disciplinary Action

The Board, at it's meeting May of 2004, took the following disciplinary actions:

### Blumenthal, Herbert – License No. DS 1627

A pattern of continued or repeated malpractice. Respondent was reprimanded.

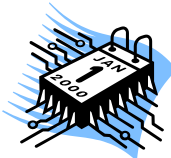
### Mueller, William A. - License No. DS 7741

Unprofessional and unethical conduct, use or participate in the use of any form of public communication containing a false, misleading or deceptive statement or claim, misrepresentation of a material fact in advertising, advertising specialty branches of dentistry with out containing the statement "the services are being performed or provided by a general dentist" and such statement must appear or be expressed in the advertisement as conspicuously as the branch of dentistry advertised, each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement and any and all advertisement are presumed to have been approved by the licensee named therein. Respondent was reprimanded, assessed \$2,400 in civil penalties and ordered to pay costs.

### Muscari, Paul V. - License No. DS 2797

Unprofessional, dishonorable and unethical conduct, violation of statutes, gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of professional practice, dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, and the practice of conscious sedation without a permit issued by the Tennessee Board of Dentistry. Respondents license was summarily suspended effective immediately and the suspension shall remain in effect until the matter is heard by the Board in a contested case hearing and the respondent was ordered to pay costs. 🦷





## Mark Your Calendar: New Rules Effective September 1<sup>st</sup>

The Board of Dentistry had a new rule defining oral and maxillofacial surgery, renaming oral pathology to oral and maxillofacial pathology, revising the assessment of costs language, and increasing certain fees. The revisions to the rules become effective September 1, 2004.

The revisions to the oral and maxillofacial rules are as follows:

### Rule 0460-1-.01, Definitions

- (11) Oral and Maxillofacial Surgery - That specialty branch of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial regions. Oral and Maxillofacial Surgery includes the treatment of the oral cavity and maxillofacial area or adjacent or associated structures and their impact on the human body that includes the performance of the following areas of Oral and Maxillofacial Surgery, as described in the most recent version of the Parameters and Pathways: Clinical Practice Guidelines for Oral and Maxillofacial Surgery of the American Association of Oral and Maxillofacial Surgeons:
- (a) Patient assessment;
  - (b) Anesthesia in outpatient facilities, as provided in T.C.A. §§ 63-5-105 (6) and 63-5-108 (g);
  - (c) Dentoalveolar surgery;
  - (d) Oral and craniomaxillofacial implant surgery;
  - (e) Surgical correction of maxillofacial skeletal deformities;
  - (f) Cleft and craniofacial surgery;
  - (g) Trauma surgery;
  - (h) Temporomandibular joint surgery;
  - (i) Diagnosis and management of pathologic conditions;
  - (j) Reconstructive surgery including the harvesting of extra oral/distal tissues for grafting to the oral and maxillofacial region; and
  - (k) Cosmetic maxillofacial surgery.

The fee increases will increase the following fees for dentist, dental hygienist and registered dental assistants:

### For dentists:

- (1) (a) Licensure Application Fee – Payable each time an application for licensure is filed. This fee also applies to limited, educational limited, dual degree and criteria (reciprocity) licensure applicants. \$400.00
- (1) (b) Limited and Educational Limited Licensure Fee – Payable each time an application for a limited or an educational limited license is filed. This fee is to be paid in addition to the licensure application fee. \$150.00
- (1) (d) Specialty Certification Application Fee – Payable each time an application for a specialty certification is filed. \$150.00
- (1) (e) Specialty Certification Examination Fee – A non-refundable fee to be paid each time a specialty exam is taken. \$150.00

- (1) (h) Licensure Renewal Fee – Payable biennially by all licensees, including educational and dual degree licensees, and excluding Inactive Volunteer licensees. \$300.00
- (1) (j) Reinstatement Fee – Payable when a licensee fails to renew licensure timely and which is paid in addition to all current and past due licensure renewal fees. \$750.00
- (1) (k) Duplicate License Fee – Payable when a licensee requests a replacement for a lost or destroyed “artistically designed” wall license or renewal certificate. \$ 30.00
- (1) (l) Inactive Volunteer Renewal Fee – This fee is paid biennially by Inactive Volunteer licensees. \$ 45.00


### For dental hygienist:

- (2) (a) Licensure Application Fee – Payable each time an application for licensure is filed. This fee also applies to criteria approval and educational licensure applications. \$115.00
- (2) (e) Licensure Renewal Fee – Payable biennially by all licensees, including criteria approved and educational licensees. \$190.00

### For registered dental assistants:

- (3) (a) Registration Application Fee – Payable each time an application for a registration to practice as a dental assistant is filed. \$ 30.00
- (3) (c) Registration Renewal Fee – Payable biennially by all registrants. \$135.00

The above fees may require the payment of other fees in addition to the fee listed. Example – the licensure renewal and registration renewal fee requires payment of the \$10.00 state regulatory fee in addition to the renewal fee.

A copy of the rules, as amended, is available in the “Rules and Regulations” section of the Board’s web site. 




Online Renewals at  
<http://tennessee.gov/health>

The quickest and easiest way to renew your license and update your information is to do it online! It’s fast, simple, secure, and convenient – and you can pay with a credit card and renew up to 120 days before your expiration date.

Just click on license renewal, and then select your board and profession, enter your profession license number, your birth date and social security number or the transaction number from your renewal notice. Next, you will update your home address, your work address and even your billing address so the Board will have current information.

The next step is to enter your renewal information. You’ll need to answer all necessary questions and provide information on licenses from other states. You’ll have the opportunity to update your education information and list your principal place of employment.

Finally, just enter your payment information. By entering your credit card through the secure site and choosing “submit,” you will have completed the online renewal application. Only choose submit one time! 

# Direct Supervision VS. General Supervision

The Board's Administrative Office receives many calls inquiring about supervision requirements for dental auxiliaries. T.C.A. 63-5-115 authorizes the employment of and practice by dental hygienist and registered dental assistants and defines direct supervision and general supervision. The text of the statute is as follows:

- (a) A duly licensed and registered dentist may employ licensed and registered dental hygienists, registered dental assistants and/or practical dental assistants. Such licensed and registered dental hygienists may practice as authorized in this section or § 63-5-108 only in the office of and under the direct and/or general supervision of a licensed and registered dentist except in authorized public health programs. Such registered and/or practical dental assistants may practice as authorized in this section or § 63-5-108 only in the office of and under the direct supervision of a licensed and registered dentist except in authorized public health programs. No provisions in this chapter shall be construed as authorizing any licensed and registered dental hygienists, registered dental assistants or practical dental assistants to practice as such except as provided in this section.

(b) Definitions.

- (1) **Direct Supervision.** As used in this chapter regarding supervision of licensed and registered dental hygienists or registered dental assistants, "direct supervision" means the continuous presence of a supervising dentist within the physical confines of the dental office when licensed and registered dental hygienists or registered dental assistants perform lawfully assigned duties and functions.

- (2) **General Supervision.** As used in this chapter, "general supervision" is defined as those instances when the dentist is not present in the dental office or treatment facility while procedures are being performed by the dental hygienist, but the dentist has personally diagnosed the condition to be treated, has personally authorized the procedures being performed and will evaluate the performance of the dental hygienist.

T.C.A. 63-5-108(c) regulates the practice of dental hygiene and when a dental hygienist can work under general supervision. The text of the statute is as follows:

- (c) Any person is deemed to be practicing dental hygiene who engages or offers to engage in those clinical procedures primarily concerned with the performance of preventive dental services not constituting the practice of dentistry, including removing all hard and soft deposits by scaling or curettage from the surfaces of the human teeth to the depth of the gingival sulcus, performing clinical examination of teeth and surrounding tissues for diagnosis by the dentist, and performing such other procedures as may be delegated by the dentist, including subgingival scaling, root planing, gingival curettage and polishing consistent with the provisions of this chapter and in accordance with the rules and regulations of the board, under supervision of a licensed and registered dentist. No person shall practice dental hygiene in a manner

which is separate or independent from a supervising dentist, or establish or maintain an office or a practice that is primarily devoted to the provision of dental hygiene services. A dental hygienist shall perform, under direct supervision only, root planing and subgingival curettage. Under general supervision a dental hygienist may provide to patients, for not more than fifteen (15) consecutive business days, all other dental hygiene services not otherwise limited to direct supervision by this chapter or rules adopted by the board, if all the following requirements are met:

- (1) The dental hygienist has at least one (1) year, full-time, or an equivalent amount of experience practicing dental hygiene;
- (2) The dental hygienist complies with written protocols for emergencies which the supervising dentist establishes;
- (3) The supervising dentist examined the patient not more than seven (7) months prior to the date the dental hygienist provides the dental hygiene services;
- (4) The dental hygienist provides dental hygiene services to the patient in accordance with a written treatment plan developed by the supervising dentist for the patient; and
- (5) The patient is notified in advance of the appointment that the supervising dentist will be absent from the location and that the dental hygienist cannot diagnose the patient's dental health care status.

Rule 0460-3-.09 list the scope of practice for dental hygienist and includes other procedures which may be performed under direct supervision only.

Practical and registered dental assistants are not allowed by statute or rule to perform any procedures under general supervision. The only exception is that registered dental assistants may participate unsupervised in educational functions involving organized groups or health care institutions regarding preventive oral health care. If a dentist is not in the office, a dental assistant may not perform any procedure, duty or function whether they are registered or not.

Any violations of the statutes and/or rules of the Board of Dentistry can result in disciplinary action by the Board against the licensee and/or registrant who violates these provisions. 🦷

## Instructions for Accessing the Board's Web Site

- ▶ <http://tennessee.gov/health>
- ▶ Licensing
- ▶ Health Professional Boards
- ▶ Select "Board of Dentistry"



## Welcome! Board Members

One new board member has been appointed by the Governor. Michael P. Tabor, D.D.S. replaced Dr. J. Glenn Greer.

We would like to welcome Dr. Tabor to the board and thank Dr. Greer for his years of service on the board. 🦷



Tennessee Board of Dentistry  
First Floor, Cordell Hull Building  
425 Fifth Avenue North  
Nashville, TN 37247-1010



**Report all address changes in writing within 30 days of the address change.**

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**Tennessee Board of Dentistry  
Board Members as of July 15, 2004**

Vacant President	Marlene S. Warren Fullilove, R.D.H. Vice-President Memphis	Harold L. Fitts, D.D.S. Secretary/Treasurer Bolivar
Beth A. Casey, R.D.H. Nashville	Bobby O. Cook, D.D.S. Dyersburg	Mark H. Wildasin, Esq. Consumer Member Nashville
Betty G. Fox, R.D.A. Knoxville	John M. Douglass, Jr., D.D.S. Nashville	William D. Nally, D.M.D. Nashville
Eben A. DeArmond, Jr., D.D.S. Cleveland	Mike Tabor, D.D.S. Hendersonville	Jeffery M. Clark, D.D.S. Greenville

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**Board Staff**

Paul R. David Executive Director	Dea M. Smith Board Manager	Tammy Roehrich Administrator
Carla McCord Administrator	Ruby Cloyd Licensing Tech	Tina Taliaferro Licensing Tech